

RESOLUTION NO. 21-110

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF
CUPERTINO AND JAMES THROOP CITY MANAGER, AND AUTHORIZING
THE MAYOR TO EXECUTE THE CONTRACT**

WHEREAS, THE City Council has hired an executive search firm which conducted an open recruitment to permanently fill the position of City Manager; and

WHEREAS, the City Council desires to appoint the City Manager subject to the terms of the At-Will City Manager Employment Agreement (“Employment Agreement”), attached hereto as Exhibit A;

WHEREAS, the terms, conditions and provisions of the Employment Agreement have been reviewed and approved by the City Attorney;

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the aforementioned Employment Agreement and authorizes the Mayor to execute said agreement on behalf of the City of Cupertino.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Quality Act of 1970 and the State CEQA Guidelines (collectively, “CEQA”) because it has no potential for resulting in physical change in the environment. In the event that this Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because the Employment Agreement would have no or only a de minimis physical impact on the environment. Where it can be seen with certainty that the action does not have the potential for causing a significant effect on the environment, CEQA does not apply. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16th day of November 2021, by the following vote:


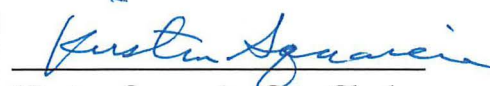
Members of the City Council

AYES: Paul, Chao, Wei, Moore, Willey

NOES: None

ABSENT: None

ABSTAIN: None

<p>SIGNED:</p>  <hr/> <p>Darcy Paul, Mayor City of Cupertino</p>	<p><u>11/17/2021</u></p> <p>Date</p>
<p>ATTEST:</p>  <hr/> <p>Kirsten Squarcia, City Clerk</p>	<p><u>11/19/21</u></p> <p>Date</p>

CITY OF CUPERTINO

AT-WILL CITY MANAGER EMPLOYMENT AGREEMENT

This AT-WILL CITY MANAGER EMPLOYMENT AGREEMENT ("Agreement") is entered into and made effective the 16th day of November, by and between the CITY OF CUPERTINO, a general law city and municipal corporation ("City"), and James Throop, an individual ("Employee").

RECITALS

WHEREAS, it is the desire of the City Council of the City of Cupertino (hereinafter the "City Council") to employ an individual to serve in the position of City Manager, which position is prescribed by state law and the City's Municipal Code; and

WHEREAS, California Government Code Section 34852 provides that an ordinance establishing a city manager form of government shall define the powers and duties of the city manager; and

WHEREAS, the powers and duties of the city manager of the City are set forth in Section 2.28.040 of the Cupertino Municipal Code; and

WHEREAS, based on Employee's executive and administrative qualifications and ability, the City Council desires to employ Employee to serve as the city manager for the City; and

WHEREAS, Employee desires to perform and assume responsibility for the provision of city manager services to the City; and

WHEREAS, the parties wish to establish the terms and conditions of Employee's provision of city manager professional services to the City through this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Employee hereby agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. City hereby employs Employee as City Manager for the City to perform the functions and duties of the City Manager, as specified in the City's Municipal Code and in the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall, from time to time, direct or assign, including but not limited to the following:

(a) To see that all laws and ordinances of the City are duly enforced and that all franchises, permits, licenses, and privileges granted by the City are faithfully performed and observed;

(b) To control, order, and give directions to all directors of departments and to subordinate officers and employees of the City under his jurisdiction through his department directors, and to transfer employees from one department to another;

(c) The services and facilities of the City Treasurer and the City Attorney shall be made available to the City Manager to the same extent and in the same manner that the services are available to the City Council;

(d) To appoint, discipline and dismiss any and all officers and employees of the City except those elected by the electors of the City or whose appointment or dismissal is denied to the City Manager under the laws of the state. The power to appoint given in this paragraph does not include the power to create a new position except as provided under Chapter 2.52 of the City's Municipal Code;

(e) To attend all meetings of the City Council unless excused there from by the City Council;

(f) To recommend to the City Council for adoption such measures and ordinances as he deems necessary or expedient;

(g) To keep the City Council at all times fully advised as to the financial conditions and needs of the City;

(h) To prepare and submit to the City Council the annual budget and to administer it after adoption;

(i) To purchase or cause to be purchased all supplies for all of the departments or divisions of the City. No expenditures shall be submitted or recommended to the City Council except on report and approval of the City Manager;

(j) To make investigation into the affairs of the City and any department or division thereof and any Contract or the proper performance of any obligation running to the City;

(k) To investigate all complaints in relation to matters consuming the administration of the government of the City and in regard to the services maintained by public utilities in the City and to see that all franchises, permits, and privileges granted by the City are faithfully observed;

(l) To execute general supervision over all public buildings, public parks, streets, and other public property which are under the control and jurisdiction of the City Council;

(m) To devote his entire working time, thought, and energy to the duties and interests of the City;

(n) To receive and open all official mail and communications addressed either to the Mayor or to the City Council;

(o) To make reports and initiate recommendations as may be desirable or as requested by the City Council; and

(p) To perform such other duties and exercise such other powers as may be delegated to him from time to time by ordinance, resolution, or other action of the City Council.

Employee shall devote his best efforts and full-time attention to performance of these duties.

1.2 Work Schedule. It is recognized that Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position and must devote a great deal of time outside the normal office hours to the business of the City. Employee acknowledges that proper performance of the duties of City Manager will require Employee to generally observe normal business hours, as set by the City and as may be duly revised from time to time, and will also often require the performance of necessary services outside of normal business hours, without the option for an alternative work schedule that includes a regularly scheduled weekday off. Notwithstanding the foregoing, the City will permit Employee such reasonable "time off" as is customary for exempt employees of the City, so long as the time off does not interfere with normal business. Employee's compensation (whether salary or benefits or other allowances) is not based on hours worked, and Employee shall not be entitled to any compensation for overtime.

1.3 Other Activities. Employee shall focus his professional time, ability, and attention to City business during the term of this Agreement. Employee shall not engage, without the express prior written consent of the City Council, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the City, that might cause a conflict of interest with the City or that otherwise might interfere with the business or operation of the City or the satisfactory performance of the functions and duties of the City Manager.

1.4 Employment Status. Upon appointment to the City Manager position, Employee shall serve at the will and pleasure of the City Council and understands that he shall be an "at-will" employee without recourse to demotion rights and shall be subject to summary dismissal without any right of notice or hearing, including any so-called due process pre-disciplinary "Skelly" hearing, except as expressly provided in this Agreement. The City Council may terminate Employee at any time in accordance with Section 3.4 below.

1.5 City Documents. All data, studies, reports, and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction or by any obligation to disclose such materials under the California Public Records Act. Such materials shall not be used by Employee, without the prior written consent of the City Council, for any purposes other than the performance

of his duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

1.6 Exclusion from Competitive Service. Employee understands, acknowledges, and agrees that he is exempt from the City's personnel system and is subject to Resolution No. 21-070, entitled "A Resolution of the City Council of the City of Cupertino Amending the Appointed Employees' Compensation Program" ("Appointed Employees' Compensation Program Resolution"), as may be amended from time to time at the sole discretion of the City Council. In the event of a conflict between the Appointed Employees' Compensation Program Resolution and this Agreement, this Agreement controls.

1.7 FLSA Exempt Status. Employee agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Agreement, Employee's initial base annual compensation shall be Two Hundred Eighty-Eight Thousand Dollars (\$288,000.00) annually ("Salary"), which shall be paid on a pro-rated basis biweekly at the same time as other employees of the City are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs as determined by the City.

2.2 Deferred Compensation. City shall provide to Employee the same deferred compensation plan that may be provided to other employees covered under the Appointed Employees' Compensation Program, if any. Employee shall be solely responsible for making contributions to the deferred compensation plan.

2.3 Annual Salary Review. The City Council and Employee agree to conduct an annual salary review concurrently with the annual performance evaluation set forth in Section 5.2. Following the annual performance review, the City Council may increase the Employee's salary. Any action to approve an increase must be approved by a majority vote of the City Council at a public meeting. The City Council and/or the Employee reserve the right to defer or refuse any or all part of any base salary adjustment if either party determines that the fiscal state of the City or any other public policy consideration warrants such action.

3.0 TERM

3.1 Commencement & Effective Date. Employee shall commence his services hereunder at 12:01 a.m. Pacific Standard Time on January 3, 2022 or such earlier date upon which the City Council and Employee may mutually agree, in either event such date will also be deemed the effective date of this Agreement ("Effective Date").

3.2 Term. This Agreement shall remain in effect from the Effective Date specified at Section 3.1 and shall automatically expire five (5) years thereafter, unless this Agreement is terminated prior to that date pursuant to Section 3.3 or Section 3.4.

3.3 Termination by Employee. Employee may terminate this Agreement at any time, provided Employee provides the City Council with at least thirty (30) days' advance written notice prior to the effective date of termination, unless a shorter period is acceptable to Council. In the event Employee terminates this Agreement, Employee expressly agrees that he shall not be entitled to any severance pay.

3.4 Termination by City. The City Council may by majority vote terminate this Agreement at any time with or without cause, by providing written notice of the reason(s). The City Council's right to terminate Employee pursuant to this Section 3.4 shall not be subject to or in any way limited by the Administrative Rules and Regulations of the Personnel Code ("Personnel Rules") or past City practices related to the employment, discipline, or termination of the City's employees. Nothing herein shall be construed to create a property interest where one does not exist by rule of law in the position of City Manager. Upon appointment to the City Manager position, Employee will be and will remain an at-will employee serving at the pleasure of the City Council.

(a) Termination by City for Cause. The City Council may terminate this Agreement for cause at any time by providing Employee with five (5) business days' written notice of the termination for cause and the facts and grounds constituting such cause. For purposes of this Agreement, the term "cause" shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: (1) breach of this Agreement; (2) violation of the City's Municipal Code, ordinances, rules, and regulations, including but not limited to the City's Personnel Rules; (3) willful or persistent material breach or neglect of duties; (4) resume fraud or other acts of material dishonesty; (5) insubordination (which shall be defined as a repeated failure to carry out a directive or directives of the City Council made by the City Council as a body); (6) corrupt or willful misconduct in office; (7) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality) or conviction of a felony under California law; (8) willful destruction or misuse of City property; (9) habitual intoxication while on duty, whether by alcohol, prescription drugs, or non-prescription drugs where they are being used in a manner not authorized by Employee's treating physician; (10) use or possession of illegal drugs; (11) inexcusable absence without an authorized leave of absence; (12) willful political activity involving the support of candidates for the City Council; (13) theft or attempted theft; (14) financial mismanagement; (15) material dishonesty; (16) willful violation of federal, state, or City discrimination and harassment laws concerning either members of the general public or City's employee(s) while acting in the course and scope of employment and/or while on City premises or time; (17) willful and unlawful retaliation against any City officer or employee or member of the general public who in good faith reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or related directly thereto; (18) willful violation of any conflict of interest or incompatibility of office laws; (19) performance of material outside business interests that conflict directly with the activities and duties as City Manager, but not including educational or professional training programs conducted by Employee whether for personal financial gain or not; (20) refusal to take or subscribe to any oath or affirmation which is required by law; (21) engaging in conduct tending to bring embarrassment or disrepute to City; (22) any illegal or unethical act involving personal gain; (23) "abuse of office or position" as defined in Government Code § 53243.4 (i.e., waste, fraud, and violation of the law under color of authority and crimes against public justice, including crimes involving bribery and

corruption); or (24) any similar cause. For any of the foregoing, the City Council may, in its discretion, place Employee on paid or unpaid administrative leave until resolution. If the City Council terminates for cause this Agreement and the services of Employee hereunder, then the City shall have no obligation to pay severance.

(b) Termination by City Council Without Cause. The City Council may terminate Employee at any time without cause but rather based upon management reasons, including but not limited to: (i) change of administration or (ii) incompatibility of management styles. In the event Employee is terminated without cause, Employee expressly agrees that he shall not be entitled to any severance pay as the result of the termination of this Agreement except as provided in Section 4.1 below.

3.5 Waiver of Certain Discipline and Termination Rights. Employee may have under the California or United States constitutions rights to a name-clearing hearing. Employee expressly waives any rights afforded under City's personnel system or policies, and any rights afforded to Employee under the Cupertino Municipal Code (including Chapter 2.52) or under state or federal law, including Government Code § 54950 *et seq.* ("Brown Act"), to any form of pre- or post- discipline or termination hearing, appeal, or other administrative process pertaining to discipline or termination. Such rights waived under this Section 3.5 include the right under the Brown Act (Government Code § 54957(b)) to have complaints or charges against an employee heard in a public session upon Employee's request.

4.0 SEVERANCE

4.1 Severance Pay. If the City Council terminates Employee without cause and Employee does not challenge such termination, including but not limited to by means of appeal or civil or administrative claim, then City shall pay to Employee severance in an amount equal to his monthly base salary (as defined in Section 2.1 above, calculated on a per diem basis) then in effect multiplied by six (6), less applicable deductions and excluding deferred compensation or the value of any other benefits.

Notwithstanding the foregoing, Government Code § 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than 18 months if the unexpired term exceeds 18 months. Accordingly, should such proposed severance payment exceed the amount authorized to be paid under Government Code § 53260, then the amount paid to Employee shall be reduced in the amount necessary to comply with such statute (For example, if termination occurs with two (2) months left in the term, severance would be equal to the monthly base salary multiplied by two (2) rather than the six (6) months otherwise provided by this Section 4.1.).

4.2 No Severance Pay if Termination for Cause or Initiated by Employee. As provided in Section 3.4(a), should Employee be terminated for cause, the City shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 3.3, should Employee initiate termination of this Agreement, the City shall have no obligation to pay the severance provided for in Section 4.1 above.

4.3 Sole Rights. The severance rights provided in this Section 4.0 shall constitute the sole and only entitlement of Employee with respect to severance pay in the event of the termination, other than for cause. Employee expressly waives any and all other rights with respect to severance pay except as provided herein. Any and all severance rights are conditioned upon and in consideration for execution of the standard "Agreement of Separation, Severance, and General Release" attached hereto in form only as Exhibit A.

5.0 PERFORMANCE EVALUATIONS

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate more effective management of the City. Nothing herein shall be deemed to alter or change the employment status of Employee (as set forth in Section 1.4 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this Agreement or the services of Employee hereunder.

5.2 Performance Evaluations. The City Council will review and evaluate the performance of Employee on a monthly basis, or on any schedule deemed appropriate by the City Council. In addition, the City Council will conduct an annual performance review and evaluation of Employee in the first half of November of each year, concurrently with an annual salary review. Any performance review (monthly, annual, or otherwise) will be conducted in accordance with the purpose noted in Section 5.1 above, and will be based on specific criteria developed by the City Council after consultation with Employee. Such criteria may be modified as the City Council may from time to time determine.

5.3 Written Summary. The City Council may, at its sole discretion, elect to provide a written summary of each performance evaluation to Employee within two (2) weeks following the conclusion of the review and evaluation process, and may, at its discretion, schedule at least one (1) closed personnel session with Employee to deliver and discuss the evaluation.

6.0 BENEFITS

6.1 Automobile Allowance. The City shall reimburse Employee for the use of his personal automobile for official City business at the rate of Five Hundred Dollars (\$500.00) per month. The car allowance and parking expense reimbursements authorized by this Section 6.1 shall constitute full compensation for any and all expenses related to the operation and maintenance of Employee's vehicle for City purposes. Employee shall maintain throughout the term of this Agreement automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for bodily injuries or death of one person and Fifty Thousand Dollars (\$50,000.00) for property damage arising from one accident. Employee shall provide City with evidence of such automobile liability insurance coverage, to consist of a certificate of insurance or a copy of the insurance policy.

6.2 PERS. Employee is a "classic" member of CalPERS and shall participate in the City's 2% at 60 formula subject to the terms and conditions in the Appointed Employees' Compensation Program.

6.3 Sick, Vacation and Holiday Leave. Upon commencement of employment, employee shall be advanced forty (40) hours of sick leave and forty (40) hours of vacation leave.

Employee shall thereafter receive sick, vacation, and holiday leave at the same level as all full-time employees, subject to the terms and conditions in the City's Personnel Rules as amended from time to time. Sick leave shall have no cash out value upon Employee's separation from the City.

6.4 Administrative Leave. Employee shall accrue administrative leave as time off from work, instead of pay or compensatory leave credit for overtime work, at the rate of eighty (80) hours per year, subject to the terms of the Appointed Employees' Compensation Program. Upon Employee's separation from City service for any reason, the City shall compensate Employee for any accrued administrative leave. The value of accrued administrative leave shall be calculated using Employee's prevailing pay rate on the date of Employee's separation from City service.

6.5 Professional Dues and Subscriptions. City agrees to pay for professional dues and subscriptions of Employee directly related to his duties as City Manager, including but not limited to membership in the International City Management Association ("ICMA") and the California City Management Foundation ("CCMF"), provided the City Council has made provisions for such costs in the annual budget.

6.6 Professional Development. City hereby agrees to pay travel and subsistence expenses of Employee for professional and office travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for City, including but not limited to city manager associations and other such national, regional, state, and local government groups and committees on which Employee serves as a member, provided that the City Council has made provisions for such costs in the annual budget. City also agrees to pay tuition, travel, and subsistence expenses of Employee for courses, institutes, and seminars that are necessary for his professional development and the good of the City, provided that the City Council has provided for same in the annual budget.

6.7 Expenses. Employee shall be entitled to reimbursement for all reasonable expenses necessarily incurred by him in the performance of his duties upon presentation of vouchers indicating the amount and purpose thereof, and further provided that such expenses are in accordance with policies established from time to time by City and consistent with budget approved by the City Council for that purpose during the term of this Agreement.

6.8 Relocation Expenses. City shall reimburse Employee following provision by Employee to City of any applicable receipts for moving and relocation expenses not to exceed Five Thousand Dollars (\$5,000.00) incurred by Employee and his household as a result of accepting the offer of employment.

6.9 Housing Assistance. Employee may elect to receive Housing Assistance in accordance with the City's Housing Assistance Program for Appointed Employees and Department Heads, Resolution No. 15-092, in effect as of the execution date of this Agreement, which is subject to approval by the City Council.

6.10 Other Benefits. Except as expressly provided in this Section 6.0, Employee shall be entitled to receive benefits as provided for under the Appointed Employees' Compensation Program, as amended from time to time, which presently consist of, but are not

limited to, retirement benefits, health coverage, life insurance, disability insurance, Cupertino sports club membership, floating holidays, and holidays. These benefits are subject to modification during the course of this Agreement at the sole and absolute discretion of City at such times and to such extent as City may deem appropriate; provided, however, there shall be no reduction in benefits unless City implements the same reduction of benefits to all other employees covered under the Appointed Employees' Compensation Program; and further provided that in the event of a conflict between the Appointed Employees' Compensation Program and this Agreement, this Agreement shall control.

7.0 BONDS AND INDEMNIFICATION

7.1 Indemnification. To the extent mandated by the California Government Code, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. This Section 7.1 shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of the services provided by Employee under this Agreement, or to any other intentional or malicious conduct or gross negligence of Employee.

7.2 Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Employee's services under this Agreement.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to Employee's employment by the City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by either party or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

8.2 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing, which amendment shall require approval by the affirmative vote of at least three (3) members of the City Council.

8.3 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:

City of Cupertino
Attention: City Clerk
10300 Torre Avenue
Cupertino, CA 95014

To Employee:

[On file with Human Resources Dept.]

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8.4 Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts or reasonably might be expected to conflict with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to Section 87100 *et seq.*, Section 1090, and Section 1125 of the Government Code, and all other similar statutory and administrative rules. Whenever any potential conflict arises or may appear to arise, the obligation shall be on Employee to seek legal advice concerning whether such conflict exists and Employee's obligations arising therefrom.

8.5 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

8.6 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

8.7 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and the parties agree that venue for any action arising out of this agreement shall be in Santa Clara County, California.

8.8 Mandatory Government Code Provisions. Government Code §§ 53243–53243.4 require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of their office or position to provide reimbursement to the local agency for the following forms of payment: (i) paid leave salary; (ii) criminal defense costs; (iii) cash settlement payments; and (iv) any non-contractual settlement payments. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

§ 53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§ 53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§ 53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§ 53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§ 53243.4. "Abuse of office or position" defined.

Employee represents that Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee, including that Employee agrees that any cash settlement or severance related to a termination that Employee may receive from the City shall be fully reimbursed to the local agency if Employee is convicted of a crime involving an abuse of Employee's office or position. The Government Code provisions referenced in this Section 8.8 are attached hereto in Exhibit B.

8.9 Independent Legal Advice. The City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, or had the opportunity to do so, and the City and Employee further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

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[signature page follows]

IN WITNESS WHEREOF, the City of Cupertino has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and Employee has signed and executed this Agreement.

CITY OF CUPERTINO
A Municipal Corporation

JAMES THROOP
An Individual

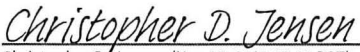
By: 
Darcy Paul
Mayor, City of Cupertino



Date: 11/17/2021

Date: 11/8/21

APPROVED AS TO FORM:


Christopher D. Jensen (Nov 17, 2021 16:18 PST)
Christopher D. Jensen
City Attorney

ATTEST:


Kirsten Squarcia
City Clerk

Date: 11/19/21